

REMARKS

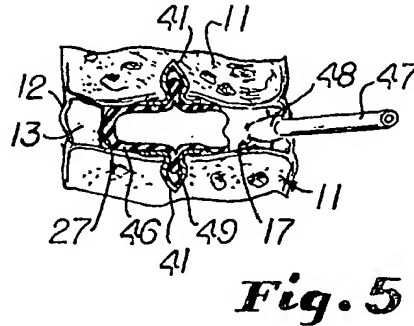
The above-referenced application has been reviewed in light of the Office Action mailed August 7, 2006. By the present amendment, the applicant has amended claim 1. It is respectfully submitted that the claims pending in the application do not introduce new subject matter, are fully supported by the specification, and are patentable over the cited prior art. Prompt and favorable consideration of these claims is earnestly sought.

In the Office Action, claims 1 and 4-12 were rejected under 35 U.S.C. § 102 (b) as anticipated by or, in the alternative, as obvious under 35 U.S.C. § 103 (a) over U.S. Patent No. 3,875,595 to Froning (the '595 patent). The Office Action characterized the '595 patent as disclosing a cannula and a retractor including a shaft and an inflatable bladder. The Office Action asserted that the inflatable bladder is inherently capable of retracting opposed surfaces of a bone joint since the inflation of the bladder would inherently apply an outward pressure against the opposed surfaces to retract them. The Office Action stated that, alternatively, it would have been obvious that inflatable bladder is capable of retracting opposed surfaces of a bone joint for the same reasons.

As presently amended, claim 1 recites a system including, *inter alia*, a cannula and a retractor, wherein the retractor includes an "inflatable bladder including a lumen extending therethrough, the lumen connecting a proximal end of the retractor with the working space such that a surgical instrument is introducible into the working space."

The '595 patent relates to a system for replacing a nucleus of an intervertebral disc with a prosthesis. In particular, the '595 patent discloses (Column 1, lines 7-9) that a "principal purpose of the present invention is to provide a prosthetic replacement for a damaged intervertebral disc." According to the '595 patent, (Column 3, lines 17-21 and 33-38, and Figure 5 reproduced below)

that prosthesis 46 is formed from a material that has such that the prosthesis holds water or fluid under pressure and substantially duplicates the normal disc. As shown and disclosed in the '595



patent, the prosthesis 46 is a closed envelope attached to the distal end of the shaft 47 using a check valve 48. According to the '595 patent (see Column 3, lines 33-43), fluid is introduced in to the prosthesis 46 to expand it to the condition shown in Figure 5. Subsequently, the stem 47 is cut off adjacent the check valve 48. The prosthesis disclosed in the '595 patent does not include a lumen extending therethrough.

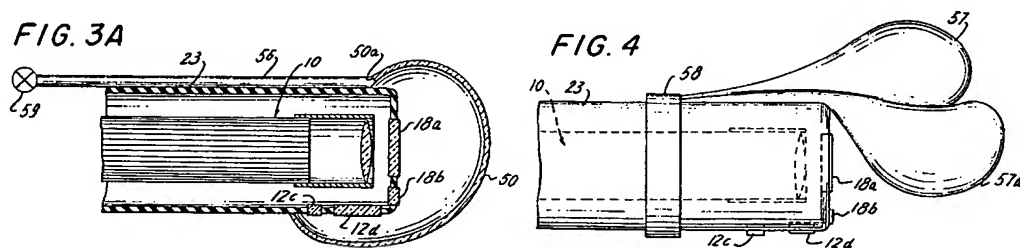
Therefore, the '595 patent fails to disclose or suggest a system including, *inter alia*, an inflatable bladder with "a lumen extending therethrough, the lumen connecting a proximal end of the retractor with the working space such that a surgical instrument is introducible into the working space" as recited in amended claim 1. Therefore, it is respectfully submitted that amended claim 1 is neither anticipated nor suggested by the '595 patent and the rejection of the Office Action has been overcome. Since claims 4-12 depend directly or indirectly from amended claim 1, it is respectfully submitted that these claims are not anticipated or suggested by the '595 patent and the rejection of the Office Action has been overcome.

In the Office Action, claims 1 and 4-12 were rejected under 35 U.S.C. § 102 (b) as anticipated by or, in the alternative, as obvious under 35 U.S.C. § 103 (a) over U.S. Patent No. 43,417,745 to Sheldon (the '745 patent). The Office Action characterized the '745 patent as

disclosing a shaft, an inflatable bladder which has an eccentric shape upon inflation, and a cannula. The Office Action asserted that the inflatable bladder has the shape of a wedge since it tapers in the proximal direction and is inherently capable of separating adjacent layers of tissue since it is made from Mylar and inflated with a substantially non-compressible fluid.

As presently amended, claim 1 recites a system including, *inter alia*, a cannula and a retractor, wherein the retractor includes an "inflatable bladder including a lumen extending therethrough, the lumen connecting a proximal end of the retractor with the working space such that a surgical instrument is introducible into the working space."

The '745 patent relates to an endoscope having an inflatable bladder disposed at a distal end portion thereof. Each of the disclosed inflatable members is an enclosed structure. None of the bladders disclosed in the '745 patent include a lumen that extends through the inflatable bladder. As illustrated below in Figures 3A and 4, the '745 patent specifically discloses inflatable members having a closed distal end. Therefore, the '745 patent fails to disclose or



suggest a system including, *inter alia*, an inflatable bladder with "a lumen extending therethrough, the lumen connecting a proximal end of the retractor with the working space such that a surgical instrument is introducible into the working space" as recited in amended claim 1. Therefore, it is respectfully submitted that amended claim 1 is neither anticipated nor suggested by the '745 patent and the rejection of the Office Action has been overcome. Since claims 4-12 depend directly or indirectly from amended claim 1, it is respectfully submitted that these claims

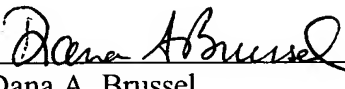
Appl. No. 10/752,933
Amdt. dated November 6, 2006
Reply to Office Action mailed August 7, 2006

are not anticipated or suggested by the '745 patent and the rejection of the Office Action has been overcome.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in the application, namely claims 1 and 4-12, are in condition for allowance. Should the Examiner desire a telephonic interview to resolve any outstanding matters, the Examiner is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road - Suite 225
Melville, New York 11747
Tel.: (631) 501-5713
Fax: (631) 501-3526


Dana A. Brussel
Reg. No. 45,717
Attorney for Applicant

Send correspondence to:
Chief Patent Counsel
Tyco Healthcare Group
195 McDermott Road
North Haven, Connecticut 06473